

ILLINOIS DEVELOPMENT FINANCE AUTHORITY

AND

COMMONWEALTH EDISON COMPANY

LOAN AGREEMENT

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\$50,000,000  
Pollution Control Revenue Refunding Bonds  
(Commonwealth Edison Company Project)  
Series 2003C

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Dated as of November 1, 2003

## TABLE OF CONTENTS

<a href="#"><u>ARTICLE I DEFINITIONS</u></a>	2
<a href="#"><u>ARTICLE II REPRESENTATIONS</u></a>	2
<a href="#"><u>Section 2.1. Representations of Authority</u></a>	2
<a href="#"><u>Section 2.2. Representations by the Company</u></a>	3
<a href="#"><u>ARTICLE III THE PROJECT; ISSUANCE OF THE BONDS</u></a>	4
<a href="#"><u>Section 3.1. Completed Project</u></a>	4
<a href="#"><u>Section 3.2. Agreement to Issue Bonds; Application of Bond Proceeds</u></a>	4
<a href="#"><u>Section 3.3. Covenants and Representations with Respect to Arbitrage</u></a>	4
<a href="#"><u>ARTICLE IV LOAN AND MORTGAGE BONDS</u></a>	5
<a href="#"><u>Section 4.1. The Loan</u></a>	5
<a href="#"><u>Section 4.2. Mortgage Bonds</u></a>	5
<a href="#"><u>Section 4.3. Payment of the Bonds from Payment of the Mortgage Bonds and Other Amounts</u></a>	5
<a href="#"><u>Section 4.4. No Defense or Set-Off</u></a>	6
<a href="#"><u>Section 4.5. Assignment of Authority's Rights</u></a>	6
<a href="#"><u>Section 4.6. Prepayments</u></a>	7
<a href="#"><u>Section 4.7. Agreement to Pay Purchase Price for Bonds</u></a>	7
<a href="#"><u>Section 4.8. Rights to Purchase Fund</u></a>	7
<a href="#"><u>ARTICLE V COVENANTS OF THE COMPANY</u></a>	8
<a href="#"><u>Section 5.1. Additional Payments</u></a>	8
<a href="#"><u>Section 5.2. Indemnity Against Claims</u></a>	8
<a href="#"><u>Section 5.3. Company's Obligation with Respect to Exclusion of Interest Paid on the Bonds</u></a>	9
<a href="#"><u>Section 5.4. Authority and Company Cooperation</u></a>	10
<a href="#"><u>Section 5.5. Maintenance of Existence</u></a>	10
<a href="#"><u>Section 5.6. Limited Obligations</u></a>	11
<a href="#"><u>Section 5.7. Taxes and Governmental Charges</u></a>	11
<a href="#"><u>Section 5.8. Exemption from Personal Liability</u></a>	11
<a href="#"><u>Section 5.9. Recordation and Other Instruments</u></a>	12
<a href="#"><u>Section 5.10. Notices and Information to Insurer</u></a>	12
<a href="#"><u>ARTICLE VI EVENTS OF DEFAULT AND REMEDIES</u></a>	13
<a href="#"><u>Section 6.1. Events of Default</u></a>	13
<a href="#"><u>Section 6.2. Events of Default Under the Company Indenture; Remedies</u></a>	13
<a href="#"><u>Section 6.3. Certain Fees and Expenses</u></a>	14
<a href="#"><u>Section 6.4. No Remedy Exclusive</u></a>	14
<a href="#"><u>Section 6.5. Waiver</u></a>	14
<a href="#"><u>ARTICLE VII MISCELLANEOUS</u></a>	15
<a href="#"><u>Section 7.1. Notices</u></a>	15
<a href="#"><u>Section 7.2. Assignments</u></a>	15
<a href="#"><u>Section 7.3. Amendments</u></a>	15
<a href="#"><u>Section 7.4. Further Assurances</u></a>	15

<a href="#"><u>Section 7.5.</u></a>	<a href="#"><u>Illinois Contract</u></a> .....	15
<a href="#"><u>Section 7.6.</u></a>	<a href="#"><u>Severability</u></a> .....	15
<a href="#"><u>Section 7.7.</u></a>	<a href="#"><u>Execution of Counterparts</u></a> .....	15
<a href="#"><u>Section 7.8.</u></a>	<a href="#"><u>Term of Agreement</u></a> .....	15
<a href="#"><u>Section 7.9.</u></a>	<a href="#"><u>Insurer as Third Party Beneficiary</u></a> .....	16

## LOAN AGREEMENT

THIS LOAN AGREEMENT (this “*Agreement*”) is made and entered into as of November 1, 2003, by and between the ILLINOIS DEVELOPMENT FINANCE AUTHORITY, a political subdivision, body politic and corporate duly organized and existing under and by virtue of the Constitution and the laws of the State of Illinois (the “*Authority*”), and COMMONWEALTH EDISON COMPANY, a corporation organized and existing under the laws of the State of Illinois (the “*Company*”).

### RECITALS

The Authority is authorized by the Illinois Development Finance Authority Act, 20 ILCS 3505/1 *et seq.*, as amended and supplemented (the “*Act*”), and the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 *et seq.*, as amended and supplemented (the “*Environmental Act*”), to issue bonds to finance pollution control and environmental facilities and to refund those bonds.

The Authority issued its \$141,000,000 Pollution Control Revenue Bonds, (Commonwealth Edison Company) Series 1985 (the “*1985 Bonds*”) and loaned proceeds of those bonds to Commonwealth Edison Company (the “*Company*”) for the purpose of financing certain pollution control and environmental facilities located at the electric generating plants set forth in Exhibit A to this Agreement (collectively, the “*Project*”).

The Authority issued its \$50,000,000 Pollution Control Revenue Bonds (Commonwealth Edison Project) Series 1994C (the “*1994C Bonds*”) to refund an equal principal amount all of the 1985 Bonds. The 1985 Bonds are no longer outstanding.

In furtherance of the purposes set forth in the Act, the Authority is undertaking the refunding of the outstanding \$50,000,000 principal amount of the 1994C Bonds by the issuance and sale of its Pollution Control Revenue Refunding Bonds (Commonwealth Edison Company Project) Series 2003C (the “*Bonds*”). The Bonds are to be issued pursuant to an Indenture as described below, and to be secured and to be payable solely from the revenues and receipts and other amounts received by the Authority pursuant to a Loan Agreement with the Company (as defined below), by Mortgage Bonds of the Company (the “*Mortgage Bonds*”), and a bond insurance policy (the “*Insurance Policy*”) issued by XL Capital Assurance Inc. (the “*Insurer*”), all as provided in the Indenture.

The Bonds issued under the Indenture will be secured by an assignment and pledge to the bond trustee of this Agreement and the Mortgage Bonds issued under a Supplemental Indenture of the Company, (the “*Supplemental Indenture*”), all as defined in the Indenture.

Accordingly, in consideration of the premises and the mutual covenants contained in this Agreement, the parties agree as follows:

## ARTICLE I

### DEFINITIONS

All words and terms defined in Article I of the Indenture shall have the same meanings in this Agreement. In addition, when used in this Agreement, words defined in the Recitals to this Agreement shall have the meanings set forth in those Recitals, and the following word shall have the following meaning.

*“Indenture”* means the Indenture of Trust dated as of November 1, 2003, between the Authority and Bank One, National Association, as trustee (the *“Trustee”*), pursuant to which the Bonds are authorized to be issued, including any indentures supplemental to it as permitted in the Indenture.

## ARTICLE II

### REPRESENTATIONS

*Section 2.1. Representations of Authority.* The Authority represents as follows:

(a) The Authority (1) is a political subdivision, body politic and corporate duly organized and existing by virtue of, and under the laws of the State of Illinois, (2) has full power and authority to enter into the transactions contemplated by this Agreement and by the Indenture and to carry out its obligations under this Agreement and the Indenture, including the issuance of the Bonds and (3) by proper corporate action has duly authorized the execution and delivery of this Agreement, the Bonds and the Indenture, as well as a Tax Exemption Certificate and Agreement among the Authority, the Trustee and the Company (the *“Tax Agreement”*).

(b) Subject to the limitation on the Authority’s liability as provided in this Agreement and in the Indenture, the Authority has not knowingly engaged in, and will not knowingly engage in, any action which would impair the exclusion of interest paid on the Bonds from the federal gross income of the owners of the Bonds (other than while held by a “substantial user” or a “related person,” within the meaning of the Code (as defined in the Indenture), of the facilities financed by the Bonds.

(c) Neither the execution and delivery by the Authority of this Agreement, the Indenture or the Tax Agreement nor the consummation by the Authority of the transactions contemplated by this Agreement, the Indenture or the Tax Agreement conflicts with, will result in a breach of or default under or will (except with respect to the lien of the Indenture on the Revenues (as defined in the Indenture) or the Mortgage Bonds) result in the imposition of any lien on any property of the Authority pursuant to the terms, conditions or provisions of any statute, order, rule, regulation, agreement or instrument to which the Authority is a party or by which it is bound.

(d) This Agreement, the Tax Agreement and the Indenture have each been duly authorized, executed and delivered by the Authority and each constitutes the legal,

valid and binding obligation of the Authority enforceable against the Authority in accordance with its terms.

(e) To the knowledge of the Authority, there is no litigation or proceeding pending or threatened against or affecting the Authority which would adversely affect the validity of this Agreement, the Indenture, the Tax Agreement or the Bonds or the ability of the Authority to comply with its obligations under this Agreement, the Indenture or the Bonds.

(f) The Authority finds and determines that, based on representations of the Company, all requirements of the Act and the Environmental Act have been complied with and that the refunding of the financing of the Project through the issuance of the Bonds will further the public purposes of the Act and the Environmental Act. The Project constitutes and will constitute “environmental facilities” as that term is defined in the Environmental Act.

(g) Neither the Executive Director of the Authority nor any of the members or officers, of the Authority have any interests in the Company and none of them are in violation of the Act or the Environmental Act with respect to the transactions contemplated by this Agreement.

(h) Subject to the limitations on the Authority’s liability as provided in this Agreement and in the Indenture, so long as any of the Bonds remain outstanding and except as may be authorized by the Indenture, the Authority will not issue or sell any bonds or obligations, other than the Bonds, the principal of or premium, if any, or interest on which will be payable from payments made under this Agreement or amounts held under the Indenture. The Authority shall have the right to request an opinion of counsel at the Company’s expense with respect to its compliance with the preceding sentence.

*Section 2.2. Representations by the Company.* The Company makes the following representations as the basis for its undertakings in this Agreement:

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois, has full corporate power to enter into, and by proper corporate action has been duly authorized to execute and deliver, this Agreement, the Tax Agreement, the Supplemental Indenture and the Mortgage Bonds.

(b) The Project consists of the facilities described in *Exhibit A*.

(c) The execution and delivery of this Agreement, the Tax Agreement, the Supplemental Indenture and the Mortgage Bonds and the consummation of the transactions contemplated in this Agreement and those documents, will not conflict with or constitute a breach of or default under the Company’s Articles of Incorporation or any bond, debenture, note or other evidence of indebtedness or any contract, agreement or lease to which the Company is a party and is not prohibited by any law, regulatory order, rule or regulation of any governmental or public agency or any judgment of any court.

(d) The Company has obtained the approval and authorization of the Illinois Commerce Commission to borrow money, enter into loan agreements and issue and deliver mortgage bonds as collateral for loan agreements. That approval includes approval for this Loan Agreement and the issuance of the First Mortgage Bonds to the Trustee as assignee of the Authority. No further or additional approval, authorization or consent of any governmental or public agency or authority is required in connection with the execution and delivery by the Company of this Agreement, the Tax Agreement, the Supplemental Indenture or the Mortgage Bonds.

(e) The information contained in the written documents relating to the Project and the use of the proceeds of the 1985 Bonds, the 1994C Bonds and the Bonds provided by the Company to the Authority and bond counsel for the Bonds is true and correct in all material respects.

### **ARTICLE III**

#### **THE PROJECT; ISSUANCE OF THE BONDS**

*Section 3.1. Completed Project.* The Company completed the acquisition, construction, installation and equipping of the Project in accordance with a Loan Agreement in connection with the 1985 Bonds and the representations of the Company made in connection with the issuance of the 1985 Bonds.

Upon the issuance of the Bonds, and the execution and delivery of this Agreement and provision for the payment of the outstanding 1994C Bonds having been made as provided in the Indenture, all obligations of the Company under the 1994C Agreement shall be released, and the obligations of the Company shall be as set forth in this Agreement and other agreements of the Company in connection with the Bonds.

*Section 3.2. Agreement to Issue Bonds; Application of Bond Proceeds.* In order to provide for the refunding of the outstanding principal amount of the 1994C Bonds, the Authority agrees that it will issue and sell its Bonds in the aggregate principal amount of \$50,000,000 and will cause them to be delivered to their purchasers. The Bonds shall bear interest and mature as set forth in the Indenture. The Authority will loan the proceeds received from the sale of the Bonds to the Company by depositing the proceeds with the Trustee in accordance with Section 701 of the Indenture.

*Section 3.3. Covenants and Representations with Respect to Arbitrage.* The Authority, to the extent it has any control over proceeds of the Bonds and subject to the limitations on its liability as provided in this Agreement and in the Indenture, and the Company covenant and represent to each other and to and for the benefit of the purchasers and owners of the Bonds from time to time outstanding that so long as any of the Bonds remain outstanding, amounts on deposit in any fund in connection with the Bonds, whether or not such amounts were derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in a manner which will cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and any lawful regulations promulgated under it, as the same exist on this date, or may from time to time in this Agreement be amended, supplemented or revised.

The Company also covenants for the benefit of the Bondholders to comply with all of the provisions of the Tax Agreement. The Company reserves the right, however, to make any investment of such amounts permitted by Illinois law, if, when and to the extent that Section 148 of the Internal Revenue Code of 1986, as amended, or regulations promulgated under it shall be repealed or relaxed or shall be held void by final judgment of a court of competent jurisdiction, but only upon receipt of a Favorable Opinion of Tax Counsel with respect to such investment.

## ARTICLE IV

### LOAN AND MORTGAGE BONDS

*Section 4.1. The Loan.* The Authority agrees, upon the terms and conditions in this Agreement, to lend to the Company the proceeds received by the Authority from the sale of the Bonds in order to provide for the refunding of the outstanding principal amount of the 1994C Bonds by depositing the same with the Trustee in accordance with Section 701 of the Indenture. The Company shall, at its own expense, pay to the Trustee for the 1994C Bonds on the date of delivery of the Bonds, all amounts in excess of the proceeds of the Bonds necessary to accomplish that refunding, without any right of reimbursement from the Authority.

The Company agrees to repay the loan from the Authority in connection with the issuance of the Bonds by making payments in amounts and at times sufficient to pay when due the principal of and interest and any premium on the Bonds. The Company approves the form, terms and provisions of the Indenture and the issuance by the Authority of the Bonds, including but not limited to, the maturity, interest rate and redemption terms of the Bonds.

To repay the loan, the Company also agrees to make all payments when due on the Mortgage Bonds.

*Section 4.2. Mortgage Bonds.* In order to secure its obligations under Section 4.1 and Section 4.7 of this Agreement, the Company shall execute and deliver to the Trustee, as assignee of the Authority, its Mortgage Bonds.

Each such Mortgage Bond will be in substantially the form set forth in the Supplemental Indenture.

*Section 4.3. Payment of the Bonds from Payment of the Mortgage Bonds and Other Amounts.* Payments, and amounts which are deemed to be payments as provided in this Agreement, on the Mortgage Bonds by the Company to the Trustee, as assignee of the Authority, shall constitute payments on the loan made to the Company under Section 4.1 of this Agreement. The Bonds shall be payable from payments made by the Company to the Trustee of payments on the Mortgage Bonds delivered under this Agreement, or other payments made by or on behalf of the Company for that purpose. Payments of principal of or premium, if any, or interest on the Bonds with amounts held under the Indenture for that payment shall be deemed to be payments with respect to the Mortgage Bonds. Whenever the Bonds are redeemable in whole or in part, the Authority will redeem them upon the request of the Company, and the Company covenants and agrees to pay an amount equal to the applicable redemption price of the Bonds as a prepayment of payments due on the Mortgage Bonds. Whenever principal is required to be paid



on the Bonds, whether at maturity or as a result of redemption or acceleration, an amount of Mortgage Bonds equal to the principal amount of such Bonds being paid shall be subject to mandatory redemption on the date principal is due on the Bonds. Whenever payment or provision for payment has been made in respect of the principal of and interest on all or any portion of the Bonds in accordance with the Indenture from sources other than the proceeds of the Insurance Policy (whether at maturity or upon redemption or acceleration), the Mortgage Bonds shall be deemed paid in a principal amount equal to the principal amount of the Bonds being paid, to the extent such payment or provision for payment of the Bonds has been made and is considered to be a payment of principal of or interest on the Bonds. If the Bonds or any portion of them are deemed paid in full from sources other than the proceeds of the Insurance Policy, Mortgage Bonds in a principal amount equal to the principal amount of the Bonds so deemed to be paid shall be cancelled and returned to the Company. Unless the Company is entitled to a credit under this Agreement or the Indenture, all payments due under this Agreement shall be in the full amount required under the Mortgage Bonds and as required to make all payments of principal of and premium and interest on the Bonds as those amounts come due, for which no other funds are available.

The Company agrees to notify the Insurer not less than two days prior to any regularly scheduled payment date for principal of or interest on the Bonds if the Company does not intend to make, or will be unable to make, such payment on the Mortgage Bonds.

If the Company shall have deposited Governmental Obligations and obtained the release of Mortgage Bonds pursuant to Section 901 or Section 902 of the Indenture, and subsequently Bonds become subject to mandatory redemption upon a determination of taxability and there are insufficient amounts available under the Indenture to effect such redemption, the Company covenants and agrees to pay to the Trustee under the Indenture any such deficiency amount as is necessary to redeem the Bonds on the date fixed for redemption.

The Authority, by the terms of the Indenture, shall require the Trustee to notify in writing the person or institution then serving as Mortgage Trustee of all payments or credits with respect to the Mortgage Bonds.

All Mortgage Bonds shall equally and ratably secure all outstanding Bonds.

*Section 4.4. No Defense or Set-Off.* The obligations of the Company to make the payments required under Section 4.1 of this Agreement and under the Mortgage Bonds shall be absolute and unconditional, without defense, recoupment or set-off by reason of any default by the Authority under this Agreement or under any other agreement between the Company and the Authority or for any other reason, or failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation to the Company, whether or not arising out of or connected with this Agreement, it being the intention of the parties that the payments required by the Company under the Mortgage Bonds and this Agreement will be paid in full when due without any delay or diminution whatsoever.

*Section 4.5. Assignment of Authority's Rights.* As security for the payment of its Bonds, the Authority will concurrently with the issuance of the Bonds pledge and assign to the Trustee the Authority's rights under this Agreement (except the right for it to receive payments

under Sections 5.1, 5.2 and 6.3 of this Agreement), including the right of the Authority to receive the Mortgage Bonds and the right to receive payments under them and under Section 4.1 of this Agreement, and the Authority covenants and agrees with the Company to pledge, assign and deliver the Mortgage Bonds and payments made under this Agreement for payment of principal, premium or interest on the Bonds to the Trustee. The Authority directs the Company, and the Company agrees, to pay to the Trustee at its Principal Office all payments under Section 4.1 of this Agreement and on the Mortgage Bonds and other payments due and payable to the Trustee under this Agreement. The Company will make payments directly to the Trustee without defense or set-off by reason of any dispute between the Company and the Trustee or the Authority. The Authority agrees that the Trustee as assignee may enforce any and all rights and remedies under this Agreement, but the Authority retains the right also to proceed in its own name against the Company for the enforcement of the performance of any obligation of the Company under Sections 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 6.3, 7.2 or 7.4 of this Agreement, including by specific performance; provided, that in any such action seeking to enforce that performance, the Authority shall have no rights with respect to the Mortgage Bonds, and in such event the obligation of the Company to make the payments required to repay the loan under this Agreement and payments required under the Mortgage Bonds shall remain unconditional as provided in Section 4.4 of this Agreement.

The Authority and the Company covenant and agree that the Mortgage Bonds will at all times be (i) in fully registered form; (ii) registered in the name of the Trustee; (iii) non-transferable except as provided in the Company Indenture; and (iv) appropriately marked to indicate clearly the restrictions on their transfer imposed by this Agreement.

*Section 4.6. Prepayments.* The Company may at any time prepay to the Trustee all or any part of the amounts payable under Section 4.1 of this Agreement by giving notice to the Trustee in accordance with Section 503 of the Indenture; such amounts will be used to redeem Bonds callable for optional redemption in accordance with their terms. A prepayment shall not relieve the Company of its obligations under this Agreement until all the Bonds have been paid or provision for the payment of all the Bonds has been made in accordance with the Indenture and of all other amounts due under this Agreement. In the event of a mandatory redemption of the Bonds, the Company will prepay or cause to be prepaid all amounts necessary for such redemption.

*Section 4.7. Agreement to Pay Purchase Price for Bonds.* The Company agrees to pay to the Paying Agent on each date on which Bonds are subject to optional or mandatory tender for purchase (other than during an Alternate Weekly Rate Period) an amount which, together with other amounts held by the Paying Agent or the Trustee under the Indenture and available for that purpose, will enable the Paying Agent to make payment of the purchase price of Bonds tendered for purchase on such date in full in a timely manner.

*Section 4.8. Rights to Purchase Fund.* Notwithstanding anything else in the Indenture or this Agreement to the contrary, neither the Authority nor the Company shall have any rights to or interest in the Purchase Fund or any amounts in it. The Company acknowledges that it has no right, title or interest in the Purchase Fund or in any amounts in it at any time and disclaims any such right, title or interest and further acknowledges that the Paying Agent shall have the sole right of withdrawal from that Fund.

## ARTICLE V

### COVENANTS OF THE COMPANY

*Section 5.1. Additional Payments.* The Company agrees to pay the following within 30 days after receipt of a bill for the following item(s):

(a) The reasonable fees and expenses of the Authority in connection with and as provided in this Agreement and the Bonds, such fees and expenses to be paid directly to the Authority or as otherwise directed in writing by the Authority;

(b) (i) The reasonable fees and expenses of the Trustee and all other fiduciaries and agents serving under the Indenture (including any expenses in connection with any redemption of the Bonds), and including any Auction Agent, Remarketing Agent and Paying Agent fees, and (ii) all reasonable fees and expenses, including reasonable attorneys' fees, of the Trustee for any extraordinary services rendered by it under the Indenture. All such fees and expenses are to be paid directly to the Trustee or other fiduciary or agent for its own account as and when such fees and expenses become due and payable; and

(c) All other reasonable fees and expenses incurred in connection with the issuance of the Bonds.

*Section 5.2. Indemnity Against Claims.* (a) The Company releases the Trustee from, agrees that the Trustee shall not be liable for, and agrees to indemnify and hold the Trustee harmless from any liabilities, losses or damages, or claims for any liabilities, losses or damages, arising out of the failure, or claimed failure, of the Company to comply with its covenants contained in this Agreement, including, in each such case, any reasonable attorneys' fees. The Company agrees to indemnify and hold the Trustee harmless to the fullest extent permitted by law from any losses, costs, charges, expenses (including reasonable attorneys' fees), judgments and liabilities incurred by it in connection with any action, suit or proceeding instituted or threatened in connection with the transactions contemplated by this Agreement or the Indenture. However, no provision of this Section 5.2(a) shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct. If any such claim is asserted, the Trustee will give prompt notice to the Company and the Company will assume the defense of the claim, with full power to litigate, compromise or settle the same in its sole discretion, it being understood that the Trustee will not settle or consent to the settlement of the same without the written consent of the Company. If the Company so assumes the defense of any so asserted claim, the Company will not be liable to any indemnified party under this Agreement for any legal or other expenses subsequently incurred by such indemnified party in connection with that defense, other than reasonable costs of investigation.

(b) The Authority and its members, officers, agents, employees, successors and assigns or other elected or appointed officials of the Authority, past, present, or future (the "*Indemnified Persons*") shall not be liable to the Company for any reason. The Company shall defend, indemnify and hold the Authority and the Indemnified Persons harmless from any loss,

claim, damage, tax, penalty or expense (including reasonable counsel fees), or liability of any nature due to any and all suits, actions, legal or administrative proceedings, or claims arising or resulting from, or in any way connected with: (i) any act, failure to act, or misrepresentation by any person in connection with the issuance, sale or delivery of the Bonds, or (ii) any act, failure to act, or misrepresentation by the Authority in connection with this Agreement or any other document involving the Authority in this matter. If any suit, action or proceeding is brought against the Authority or any Indemnified Person, that suit, action or proceeding shall be defended by counsel to the Authority or the Company, as the Authority shall determine; *provided, however*, that in the event of an examination by the Internal Revenue Service of the exclusion of interest on the Bonds, the Authority will cooperate with the Company, at the Company's expense and at its direction, in connection with such examination, unless the Authority has been advised by counsel that the Authority and the Company have actual or potential differing interests. If the defense is by counsel to the Authority, the Company shall indemnify the Authority and the Indemnified Persons for the reasonable cost of that defense, including reasonable counsel fees. If the Authority determines that the Company shall defend the Authority or any Indemnified Person, the Company shall immediately assume the defense at its cost. Neither the Authority nor the Company shall be liable for any settlement of any proceeding made without each of their consent (which consent shall not be unreasonably withheld).

(c) The Company shall also indemnify the Authority and Indemnified Persons for all reasonable costs and expenses, including reasonable counsel fees, incurred in (i) enforcing any obligation of the Company under this Agreement or any related agreement, (ii) taking any action requested by the Company, (iii) taking any action required by this Agreement or any related agreement, or (iv) taking any action considered necessary by the Authority and which is authorized by this Agreement or any related agreement.

(d) Any provision of this Agreement or any other instrument or document executed and delivered in connection with this Agreement to the contrary notwithstanding, the Authority retains the right to (i) enforce any applicable federal or state law or regulation, or any ordinance of the Authority and (ii) enforce any rights accorded the Authority by federal or state law or regulation or by any ordinance of the Authority, and nothing in this Agreement shall be construed as an express or implied waiver of those rights.

(e) If the Authority is to take any action under this Agreement or any other instrument executed in connection with this Agreement for the benefit of the Company, it will do so if and only if (i) the Authority is a necessary party to any such action or proceeding, (ii) the Authority has received specific written direction from the Company, as required under this Agreement or under any other instrument executed in connection with this Agreement, as to the action to be taken by the Authority and (iii) a written agreement of indemnification and payment of costs, liabilities and expenses satisfactory to Authority has been executed by the Company prior to the taking of any such action by the Authority.

(f) The obligations of the Company under this Section 5.2 shall survive any assignment or termination of this Agreement and any resignation or removal of the Trustee.

*Section 5.3. Company's Obligation with Respect to Exclusion of Interest Paid on the Bonds.* Notwithstanding any other provision of this Agreement, the Company covenants and

agrees that it will not knowingly take or authorize or permit, to the extent such action is within the control of the Company, any action to be taken with respect to the Project, or the proceeds of the Bonds (including investment earnings on them), insurance, condemnation, or any other proceeds derived directly or indirectly in connection with the Project, which will result in the loss of the excludability of interest on the Bonds from federal gross income under the Code (except for any Bond during any period while any such Bond is held by a “substantial user” or a “related person” (as defined in the Code) with respect to the facilities financed for the Bonds); and the Company also will not knowingly omit to take any action in its power which, if omitted, would cause that result. The Company covenants for the benefit of the Bondholders to comply with all of the requirements of Section 802 of the Indenture. This provision shall control in case of conflict or ambiguity with any other provision of this Agreement.

The Company acknowledges that in the event of an examination by the Internal Revenue Service of the exclusion of interest on the Bonds from the gross income of their owners for federal income tax purposes under current regulations, the Internal Revenue Service will treat the Authority as the “taxpayer” in such examination. The Company and the Authority each agree that it will respond in a commercially reasonable manner to any inquiries from the Internal Revenue Service in connection with such an examination. The Authority covenants that it will promptly give written notice to the Company of the commencement of any such examination and will cooperate with the Company, at the Company’s expense and at its direction, in connection with such examination, unless the Authority has been advised by counsel that the Authority and the Company have actual or potential differing interests.

The Company covenants and agrees to notify the Trustee, the Authority and the Insurer of the occurrence of any event of which the Company has notice and which event would require the Company to prepay the amounts due under this Agreement because of a redemption upon a determination of taxability.

*Section 5.4. Authority and Company Cooperation.* In the event it may be necessary for the proper performance of this Agreement that application or applications for any permit or license to do or to perform certain things be made to any governmental or other agency by the Company or the Authority, the Company and the Authority each agree to execute upon the reasonable request of the other such application or applications.

*Section 5.5. Maintenance of Existence.* The Company agrees that during the term of this Agreement and so long as any Bond is outstanding, it will maintain its corporate existence, will continue to be a corporation in good standing under the laws of the State, will not dissolve or otherwise transfer all or substantially all of its assets and will not consolidate with or merge into another legal entity or permit one or more other legal entities (other than one or more subsidiaries of the Company) to consolidate with or merge into it, unless (a) such transfer, consolidation or merger is permitted under the Company Indenture, (b) the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that such transfer, consolidation or merger complies with this Section, and (c) either (i) the Company is the surviving corporation (in the case of a merger or consolidation), or (ii)(A) the surviving, resulting or transferee legal entity is organized and existing under the laws of the United States, a state thereof or the District of Columbia, and (if not the Company) assumes in writing all the obligations of the Company under this Agreement and the Mortgage Bonds and either is or becomes qualified to do business in the

State and (B) no event which constitutes, or which with the giving of notice or the lapse of time or both would constitute, an Event of Default shall have occurred and be continuing immediately after such transfer, merger or consolidation.

*Section 5.6. Limited Obligations.* All obligations of the Authority arising from this Agreement, including the Bonds, are special, limited obligations of the Authority, with a claim for payment solely from funds and revenues as provided in the Indenture, including payments under the Loan Agreement, and related Mortgage Bonds of the Company and have no claim for payment from any other funds of the Authority. The Bonds are not an indebtedness or obligation of the State of Illinois within the purview of any constitutional limitation or provision. The Bonds have no claim for payment from any other funds of the Authority. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the State or any political subdivision of the State to levy any form of taxation for the Bonds, nor does it obligate the State or any political subdivision to make any appropriation for their payment (other than the obligation of the Authority to apply the funds and revenues pledged for the Bonds as provided in the Indenture). The State shall not be liable for the payment of the Bonds, or for the performance of any pledge, obligation or agreement undertaken by the Authority in connection with the Bonds, and no breach of any obligation of the Authority, including under this Agreement, shall impose any monetary liability against the State or any charge on its general credit or against its taxing power.

*Section 5.7. Taxes and Governmental Charges.* The Company will promptly pay, as they become due, all lawful taxes, assessments and governmental charges of any kind whatsoever including, without limitation, income, profits, property and excise taxes levied or assessed by federal, state or any local government upon the Authority with respect to any payments under this Agreement. The Authority agrees to give the Company prompt notice of any such assessments or governmental charges.

The Company may, at its expense and in its own name and behalf or in the name and behalf of the Authority, if it is a necessary party, in good faith contest any such taxes, assessments and other charges and, in the event of any such contest, permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal from it, provided during such period enforcement of any such contested item shall be effectively stayed. The Authority, at the expense of the Company, will cooperate fully with the Company in any such contest.

*Section 5.8. Exemption from Personal Liability.* No recourse under or upon any obligation, covenant or agreement created by this Agreement, or for any claim based on this Agreement or otherwise in respect of it, shall be had against any incorporator, stockholder, director, officer or employee, as such, past, present or future, of the Company or of any predecessor or successor corporation, either directly or through the Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Agreement is solely a corporate obligation of the Company, and that no such personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, directors, officers or employees, as such, of the Company or any predecessor or successor corporation, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied from them; and that

any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, director, officer or employee, as such, under or by reason of the obligations, covenants or agreements contained in this Agreement, or implied from them, are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

No recourse shall be had for the payment of the principal of or interest or premium on any of the Bonds or for any claim based on the Bonds or upon any obligation, covenant or agreement contained in this Agreement or in the Indenture, against any past, present or future member, director, officer, employee or agent of the Authority, or through the Authority, or any successor corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such member, director, officer, employee or agent as such is expressly waived and released as a condition of and in consideration for the execution of this Agreement, the Indenture and the issuance of any of the Bonds.

*Section 5.9. Recordation and Other Instruments.* In order to perfect the security interest of the Trustee in the Trust Estate, the Company will cause such needed security agreements or financing statements, naming the Trustee as assignee and pledgee of the Trust Estate assigned and pledged under the Indenture, for the payment of the principal of and premium, if any, and interest on the Bonds, to be duly filed and recorded in the appropriate offices as required by the provisions of the Uniform Commercial Code or other similar law as adopted in the State, as from time to time amended. To continue the perfection of the security interest evidenced by such security agreements or financing statements, the Company shall file and record such necessary continuation statements, if any, or supplements to them and other instruments from time to time as may be required pursuant to the provisions of that Uniform Commercial Code or other similar law to fully preserve and protect the security interest of the Trustee in the Trust Estate. The Company shall file and refile such instruments which shall be necessary to preserve and perfect the lien of the Indenture upon the Trust Estate until the principal of and premium, if any, and interest on the Bonds issued under the Indenture shall have been paid or provision for their payment shall be made as provided in the Indenture.

The Authority shall have no responsibility for the preparation, filing or recording of any instrument, document or financing statement or for the maintenance of any security interest intended to be perfected by that filing or recording. The Authority will execute such instruments as may be necessary in connection with such filing or recording.

*Section 5.10. Notices and Information to Insurer.* The Company shall furnish to the Insurer as soon as practicable after its filing under this Agreement, a copy of any publicly filed financial statement of the Company and a copy of any publicly filed audit and annual report of the Company, as well as such additional information it may reasonably request.

To the extent the Company enters into a continuing disclosure agreement with respect to the Bonds, the Insurer shall be included as a party to be notified.

The Company will permit the Insurer to discuss the affairs, finances and accounts of the Company or any information the Insurer may reasonably request regarding the security for the

Bonds with appropriate officers of the Company. The Trustee or the Company, as appropriate, will permit the Insurer to have access to and to make copies of all books and records relating to the Bonds at any reasonable time.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

*Section 6.1. Events of Default.* The occurrence and continuation of any one of the following shall constitute an “Event of Default” under this Agreement:

(i) failure by the Company to pay any loan repayments required to be paid under this Agreement on the dates and in the manner specified in this Agreement, and continuation of such failure after the expiration of any grace period applicable to the Mortgage Bonds under the Company Indenture; or

(ii) failure by the Company to observe and perform any covenant or agreement in this Agreement to be observed or performed by it (other than as referred to in subsection (i) above), which shall occur and continue for a period of 60 days after written notice specifying such failure and requesting that it be remedied is given to the Company by the Authority or the Trustee, unless (A) the Authority and the Trustee shall agree in writing to an extension of such time prior to its expiration or (B) if the failure is such that it can be corrected (but not within such 60 day period), it shall not constitute an Event of Default under this Agreement if corrective action is instituted by the Company within such period and diligently pursued until such failure is corrected; *provided, however,* that the failure to observe any covenant, agreement or representation in this Agreement, which failure results in interest on the Bonds becoming includable for federal income tax purposes in the gross income of any owner of a Bond (other than an owner who is a “substantial user” of the Project or a “related person” of the facilities financed by the Bonds as defined in the Code) shall not be an Event of Default under this Agreement, and shall not give rise to any action by any Bondholders for breach of such covenant, so long as the Company is proceeding to redeem the Mortgage Bonds in order to effect the redemption of the Bonds upon a determination of taxability as described in the Bonds; or

(iii) the occurrence of an Event of Default under, and as defined in, the Company Indenture; or

(iv) an “event of default” shall occur and be continuing under the Indenture; or

(v) the receipt by the Trustee of notice from the Insurer that an “event of default” has occurred and is continuing under the Insurance Agreement dated as of November 1, 2003, between the Insurer and the Company.

*Section 6.2. Events of Default Under the Company Indenture; Remedies.* The Trustee, as the assignee of the Authority and as an owner of the Mortgage Bonds, shall have the remedies



provided in the Company Indenture for owners of bonds issued under it upon the happening of any “Event of Default” as defined in the Company Indenture.

In addition to such remedies, the Authority (on its own behalf and without the consent of the Trustee) or the Trustee, as assignee of certain rights of the Authority under this Agreement, may at any time take any action at law or in equity to collect any payments then due, or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Agreement.

The Insurer is entitled to control the exercise of all rights and remedies of the Bondholders and the Trustee during an Event of Default under this Agreement unless the Insurer fails to make a payment when and as required under the provisions of the Insurance Policy and such failure is continuing.

Any amounts collected pursuant to action taken under this Section or under the Company Indenture shall be deposited with the Trustee and applied in accordance with the Indenture.

*Section 6.3. Certain Fees and Expenses.* If an Event of Default shall occur under this Agreement and the Authority or the Trustee shall employ attorneys or incur other expenses for the collection of payments due under this Agreement or for the enforcement of performance or observance of any obligation or agreement on the part of the Company contained in this Agreement, the Company will on demand reimburse the reasonable fees of such attorneys and such other reasonable expenses so incurred.

*Section 6.4. No Remedy Exclusive.* No remedy in this Agreement conferred upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or in this Agreement existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any right or power, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be in this Agreement expressly required. Such rights and remedies as are given the Authority under this Agreement shall also extend to the Trustee, and the Trustee and the owners of the Bonds, subject to the provisions of the Indenture, shall be entitled to the benefit of all covenants and agreements in this Agreement.

*Section 6.5. Waiver.* In the event that any agreement contained in this Agreement shall be breached by either party and such breach shall subsequently be waived by the other party with the consent of the Trustee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

## ARTICLE VII

### MISCELLANEOUS

*Section 7.1. Notices.* All notices, requests, certificates or other communications shall be sufficiently given if mailed by first class mail, postage prepaid (except with respect to notices sent to the Insurer, which shall be sent by registered or certified mail), addressed as follows: if to the Authority, at Illinois Development Finance Authority, 233 South Wacker Drive, Suite 4000, Chicago, Illinois 60606, Attention: Executive Director, with a copy to the attention of the Legal Department; if to the Company, to Exelon Corporation, 10 South Dearborn Street, Chicago, Illinois 60603 Attention: Director of Finance; if to the Trustee at Bank One, National Association, 1 Bank One Plaza, Suite IL1-0823, Chicago, Illinois 60670-0823 Attention: Global Corporate Trust Services Division, and, if to the Insurer, at XL Capital Assurance Inc., 1221 Avenue of the Americas, New York, New York 10020, Telephone No. (212) 478-3400, Attention: Surveillance. A duplicate of each notice, certificate or other communication given under this Agreement by any party to the other shall also be given to the others. The parties may, by notice given under this Agreement, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

*Section 7.2. Assignments.* This Agreement may not be assigned by either party without consent of the other and the Insurer, except that the Authority shall pledge and assign to the Trustee rights of the Authority under this Agreement and the Mortgage Bonds as provided by Section 4.5 of this Agreement or in this Indenture, and the Company may assign its rights under this Agreement to any transferee or any surviving or resulting corporation pursuant to Section 5.5 of this Agreement.

*Section 7.3. Amendments.* This Agreement may not be amended except in accordance with Article XV of the Indenture.

*Section 7.4. Further Assurances.* The Company covenants and agrees to pay the expenses of the Authority incurred, and use its best efforts to cause the Authority to perform the obligations of the Authority, under Section 604 of the Indenture at the expense of the Company.

*Section 7.5. Illinois Contract.* This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be construed in accordance with the laws of the State.

*Section 7.6. Severability.* In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that shall not invalidate or render unenforceable any other provision of this Agreement.

*Section 7.7. Execution of Counterparts.* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*Section 7.8. Term of Agreement.* This Agreement shall be in full force and effect from the date of this Agreement, and shall continue in effect until the payment in full of all principal of and premium, if any, and interest on the Bonds, or provision for their payment shall have been

made pursuant to Article IX of the Indenture, all fees, charges and expenses of the Authority and the Trustee have been fully paid or provision made for such payment (the payment of which fees, charges, indemnities and expenses shall be evidenced by a written certification of the Company that it has fully paid all such fees, charges and expenses) and all other amounts due under this Agreement have been duly paid or provision made for such payment. All representations, certifications and covenants by the Company as to the indemnification of various parties and the payment of fees and expenses of the Authority as described in Section 5.1 of this Agreement, and all matters affecting the tax-exempt status of the Bonds shall survive the termination of this Agreement.

*Section 7.9. Insurer as Third Party Beneficiary.* The Insurer is explicitly recognized as a third party beneficiary under this Loan Agreement, except with respect to rights of the Authority under this Loan Agreement which are excluded from the Trust Estate under its Granting Clauses First and Second and may enforce any right, remedy or claim given or granted under this Loan Agreement (other than rights, remedies or claims so excluded from the Trust Estate) for the benefit of the Trustee and Bondholders (or for itself if there is a payment default on the Bonds for which the Insurer shall have had made an insurance payment).

IN WITNESS, the Authority and the Company have caused this Agreement to be duly executed and their respective corporate seals to be affixed to this Agreement and attested by their duly authorized officers, all as of November 1, 2003.

ILLINOIS DEVELOPMENT FINANCE  
AUTHORITY

By: \_\_\_\_\_  
Executive Director

(SEAL)

Attest:

\_\_\_\_\_  
Secretary

COMMONWEALTH EDISON COMPANY

By: \_\_\_\_\_  
J. Barry Mitchell  
Vice President and Treasurer

(SEAL)

Attest:

\_\_\_\_\_  
Assistant Secretary

All right, title and interest of the Authority in and to this Agreement and the Mortgage Bonds except for the rights of the Authority under Sections 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 6.3, 7.2 and 7.4 of this Agreement, have been assigned to the Trustee pursuant to the Indenture.

## **EXHIBIT A**

Braidwood Generating Station, Braidwood, Illinois  
Byron Generating Station, Byron, Illinois  
LaSalle County Generating Station, Marseilles, Illinois